

115. UBS was a “control person” of Defendant UBSFS within the meaning of Section 15 of the Securities Act, by virtue of its position of operational control and/or authority over the UBS Tier 1 Funds. Defendant UBS, directly and indirectly, had and exercised the power and authority to cause Defendant UBSFS to engage in the wrongful conduct complained of herein. UBS issued, caused to be issued, and participated in the issuance of materially false and misleading statements in the prospectuses.

116. Pursuant to Section 15 of the Securities Act, by reason of the foregoing, Defendant UBS is liable to Plaintiffs and the other members of the Purchasers Subclass to the same extent as Defendant UBSFS for its primary violations of Section 15 of the Securities Act.

117. By virtue of the foregoing, Plaintiffs and other Class members are entitled to damages against UBS.

EXCHANGE ACT CLAIMS
FRAUD-ON-THE MARKET ALLEGATIONS

118. At all relevant times, the market for the Tier 1 Funds was efficient for, *inter alia*, the following reasons:

- a. The Tier 1 Funds met the requirements for listing, and were listed and actively traded through a highly efficient and automated market;
- b. Regulated entities and periodic public reports concerning the Tier 1 Funds were regularly filed with the SEC;
- c. Persons associated with the Tier 1 Funds regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

d. The Tier 1 Funds were followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

e. As a result of the foregoing, the market for the Tier 1 Funds promptly digested current information regarding the Tier 1 Funds from all publicly available sources and reflected such information in the respective value for the Tier 1 Funds as well as the market trend and demand for the shares of the Tier 1 Funds. Investors who purchased or otherwise acquired shares or interests in the Tier 1 Funds relied on the integrity of the market for such securities. Under the circumstances, all purchasers of the Tier 1 Funds during the Class Period suffered similar injury through their purchase or acquisition of the Tier 1 Funds at a value that did not reflect the risks and costs of the continuing course of conduct alleged herein, and a presumption of reliance applies.

COUNT III

AGAINST ALL DEFENDANTS FOR VIOLATION OF SECTION 10(b) ON BEHALF OF THE PURCHASERS SUBCLASS OF THE EXCHANGE ACT AND RULE 10b-5 PROMULGATED THEREUNDER

119. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein except for claims brought pursuant to the Securities Act.

120. During the Class Period, UBSFS carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did deceive the investing public, including Plaintiffs and other members of the Purchasers Subclass as alleged herein and caused Plaintiffs and other members of the Purchasers Subclass to purchase Tier 1 Funds at distorted prices and to otherwise suffer damages. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each of them, took the actions set forth herein.

121. UBSFS (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of conduct which operated as a fraud and deceit upon the purchasers of the Tier 1 Funds, including Plaintiffs and other members of the Purchasers Subclass, in an effort to enrich themselves through undisclosed manipulative tactics by which they wrongfully distorted the pricing of their securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. UBSFS are sued as primary participants in the wrongful and illegal conduct and scheme charged herein.

122. UBSFS, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the Tier 1 Funds' operations, as specified herein.

123. UBSFS employed devices and artifices to defraud and engaged in a course of conduct and scheme as alleged herein to unlawfully manipulate and profit from excess fees and commissions paid to them as a result of its undisclosed competitions to peddle the Tier 1 Funds and thereby engaged in transactions, practices and a course of conduct which operated as a fraud and deceit upon Plaintiffs and the members of the Purchasers Subclass.

124. UBSFS had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing the truth.

125. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market prices of the Tier 1 Funds were distorted during the Class Period such that they did not reflect the risks and costs of the continuing course of conduct alleged herein. In ignorance of the fact that market prices of the shares were distorted, and relying directly or indirectly on the false and misleading statements made by UBSFS, or upon the integrity of the market in which the securities trade, and/or on the absence of material adverse information that was known to or recklessly disregarded by UBSFS but not disclosed in public statements by UBSFS during the Class Period, Plaintiffs and the other members of the Purchasers Subclass acquired the shares or interest in the Tier 1 Funds during the Class Period at distorted prices and were damaged thereby.

126. At the time of said misrepresentations and omissions, Plaintiffs and other members of the Purchasers Subclass were ignorant of their falsity, and believed them to be true. Had Plaintiffs and other members of the Purchasers Subclass known the truth concerning the Tier 1 Funds' operations, which UBSFS did not disclose, Plaintiffs and other members of the Class would not have purchased or otherwise acquired their shares or, if they had acquired such shares during the Class Period, they would not have done so at the distorted prices which they paid.

127. By virtue of the foregoing, UBSFS have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

128. As a direct and proximate result of UBSFS' wrongful conduct, Plaintiffs and other members of the Purchasers Subclass suffered damages in connection with their purchases and acquisitions of Tier 1 Funds during the Class Period.

COUNT IV

**ON BEHALF OF THE PURCHASERS SUBCLASS AGAINST UBSFS
FOR VIOLATION OF SECTION 10(b) OF THE EXCHANGE ACT
AND RULE 10b-5(a) AND (c) PROMULGATED THEREUNDER**

129. Members of the Purchasers Subclass repeat and reallege each and every allegation contained above as if fully set forth herein except for claims brought pursuant to the Securities Act.

130. During the Class Period, UBSFS carried out a plan, scheme and course of conduct which was intended to, and throughout the Class Period did, deceive the investing public, including members of the Purchasers Subclass as alleged herein, and caused members of the Purchasers Class to purchase shares of the Tier 1 Funds and to otherwise suffer damages. In furtherance of this unlawful scheme, plan and course of conduct, UBS took the actions set forth herein.

131. UBSFS: (i) employed devices, schemes, and artifices to defraud; and (ii) engaged in acts, practices, and a course of conduct which operated as a fraud and deceit upon the purchasers of the Tier 1 Funds, including members of the Purchasers Subclass, in an effort to enrich themselves through undisclosed manipulative tactics by which they wrongfully distorted the value and market trends of the Tier 1 Funds in violation of Section 10(b) of the Exchange Act and Rule 10b-5. UBSFS is sued as the primary participant in the wrongful and illegal conduct and scheme charged herein.

132. UBSFS, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about UBS and the Tier 1 Funds' operations, as specified herein.

133. UBSFS employed devices and artifices to defraud and engaged in a course of conduct and scheme as alleged herein to unlawfully manipulate and profit from excessive fees and commissions as a result of the undisclosed sales practices to peddle the Tier 1 Funds alleged above and thereby engaged in transactions, practices and a course of conduct which operated as a fraud and deceit upon members of the Purchasers Subclass.

134. The members of the Purchasers Subclass reasonably relied upon the integrity of the market in which the Tier 1 Funds traded.

135. Members of the Purchasers Subclass were ignorant of UBSFS' fraudulent scheme. Had members of the Purchasers Subclass known of UBSFS' unlawful scheme, they would not have purchased or otherwise acquired shares of the Tier 1 Funds or if they had, they would not have purchased or otherwise acquired them at the artificial prices they paid for such securities.

136. Members of the Purchasers Subclass were injured because the risks that materialized were risks of which they were unaware, which resulted from UBSFS' scheme to defraud as alleged herein. Absent UBSFS' wrongful conduct, members of the Purchasers Subclass would not have been injured.

137. By virtue of the foregoing, UBSFS violated Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c) promulgated thereunder.

138. As a direct and proximate result of UBSFS' wrongful conduct, members of the Purchasers Subclass suffered damages in connection with their purchases and acquisitions of the Tier 1 Funds during the Class Period.

COUNT V

**ON BEHALF OF THE PURCHASERS SUBCLASS
AGAINST DEFENDANT UBS FOR VIOLATIONS
OF SECTION 20(a) OF THE EXCHANGE ACT**

139. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein except for claims brought pursuant to the Securities Act.

140. This claim is brought on behalf of the Purchasers Subclass pursuant to Section 20(a) of the Exchange Act against UBS Defendants as a control person of UBSFS.

141. UBS acted as a controlling person of the Tier 1 Funds within the meaning of Section 20(a) of the Exchange Act for the reasons alleged herein. By virtue of its operational and management control of the Tier 1 Funds' respective businesses and systematic involvement in the fraudulent scheme alleged herein, UBS had the power to influence and control and did influence and control, directly or indirectly, the decision-making and actions of the UBSFS, including the content and dissemination of the various statements which Plaintiffs contend are false and misleading. UBS had the ability to prevent the issuance of the statements alleged to be false and misleading or could have caused such statements to be corrected.

142. In particular, UBS had direct and supervisory involvement in the operations of UBSFS and, therefore, is presumed to have had the power to control or influence the particular transaction giving rise to the securities violations as alleged herein, and to have exercised the same.

143. As set forth above, UBS and UBSFS each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of its position as a controlling person UBS is liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of UBS Defendants' wrongful conduct, Plaintiffs and other members of the Purchasers

Subclass suffered damages in connection with their purchases of Tier 1 Funds securities during the Class Period.

ICA CLAIMS

COUNT VI

**ON BEHALF OF THE HOLDER SUBCLASS AGAINST THE
INVESTMENT ADVISOR DEFENDANTS AND DIRECTOR
DEFENDANTS FOR VIOLATIONS OF SECTION 34(b) OF THE ICA**

144. Members of the Holders Subclass repeat and reallege each and every allegation contained above as if fully set forth herein.

145. This Count is asserted against the Investment Advisor Defendants in their role as Investment Advisors to the Funds and against the Director Defendants for their role in the creation of the materially false and misleading UBS Fund Prospectuses.

146. The Investment Advisor Defendants and Director Defendants omitted to state facts necessary to prevent statements in registration statements and reports filed and disseminated pursuant to the Investment Company Act, in light of the circumstances under which they were made, from being materially false and misleading. The Investment Advisor Defendants and Director Defendants failed to disclose the following:

a. that the Investment Advisor Defendants authorized the payment from fund assets of excessive commissions to broker dealers in exchange for preferential marketing services known as “Tier 1” and that such payments were in breach of their fiduciary duties, in violation of Section 12(b) of the Investment Company Act, and unprotected by any “safe harbor”;

b. that the Investment Advisor Defendants and/or the Distributor Defendant compensated themselves out of investor assets for any payment made pursuant to revenue sharing agreements;

c. that the Investment Advisor Defendants and/or the Distributor Defendant directed brokerage payments to firms that favored the UBS Funds, which constituted a form of marketing that was not disclosed in or authorized by the Funds Rule 12b-1 Plan;

d. that the UBS Funds' Rule 12b-1 Plan was not in compliance with Rule 12b-1, and that payments made pursuant to the plan were in violation of Section 12(b) of the Investment Company Act because, among other reasons, the plan was not properly evaluated by the Director Defendants and there was not a reasonable likelihood that the plan would benefit the company and its shareholders;

e. that by paying brokers to aggressively steer their clients to the UBS Funds, the Investment Advisor Defendants and/or the Distributor Defendant were knowingly and/or recklessly aiding and abetting breaches of fiduciary duties, and profiting from the brokers' improper conduct;

f. that any economies of scale achieved by marketing of the UBS Funds to new investors were not passed on to the UBS Funds' investors; on the contrary, as the Funds grew, fees charged to the UBS Funds' investors continued to increase;

g. that Defendants improperly used soft dollars and excessive commissions, paid from the UBS Fund investors' assets, to pay for overhead expenses the cost of which should have been borne by the Investment Advisor and Distributor Defendants and not the Funds' investors; and

h. that the Director Defendants had abdicated their duties under the Investment Company Act and their common law fiduciary duties, that the Director Defendants failed to monitor and supervise the Investment Advisor Defendants and that, as a consequence,

the Investment Advisor Defendants were able to systematically skim millions and millions of dollars from the UBS Fund investors.

147. By reason of the conduct described above, the Investment Advisor Defendants and the Director Defendants violated Section 34(b) of the Investment Company Act.

148. As a direct, proximate and foreseeable result of the Investment Advisor Defendants' and Director Defendants' violation of Section 34(b) of the Investment Company Act, the Funds' investors have incurred damages.

149. Plaintiffs and other members of the Class have been especially injured by Defendants' violations of Section 34(b) of the Investment Company Act. Such injuries were suffered directly by shareholders as a result of being induced to hold the UBS Funds, rather than by the UBS Funds themselves.

150. The Investment Advisor Defendants and Director Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal such adverse material information.

COUNT VII

ON BEHALF OF THE HOLDERS SUBCLASS AGAINST THE DISTRIBUTOR DEFENDANT, THE INVESTMENT ADVISOR DEFENDANTS AND THE DIRECTOR DEFENDANTS PURSUANT TO SECTION 36(a) OF THE ICA

151. Plaintiffs and the other members of the Holder Subclass repeat and reallege each and every allegation contained above and otherwise incorporate the allegations contained above.

152. This Count is brought against the Distributor Defendant, the Investment Advisor Defendants and the Director Defendants for breach of their fiduciary duties as defined by Section 36(a) of the Investment Company Act.

153. The Distributor Defendant, the Investment Advisor Defendants and the Director Defendants had a fiduciary duty to the member of the Holders Subclass.

154. The Distributor Defendant, the Investment Advisor Defendants and the Director Defendants violated Section 36(a) by improperly charging investors in the UBS Funds purported Rule 12b-1 marketing fees, and by drawing on assets of the UBS Funds' investors to make undisclosed payments of soft dollars and excessive commissions, as defined herein, in violation of Rule 12b-1.

155. By reason of the conduct described above, the Distributor Defendant, the Investment Advisor Defendants and the Director Defendants violated Section 36(a) of the Investment Company Act.

156. As a direct, proximate and foreseeable result of the Distributor Defendant's, the Investment Advisor Defendants' and the Director Defendants' breaches of fiduciary duty in their roles as principal underwriter, Investment Advisors, and Directors and Officers, respectively, to the Funds' investors, the members of the Holders Subclass have incurred millions of dollars in damages.

157. Members of the Holders Subclass, in this count, seek to enjoin Defendants from engaging in such practices in the future as well as recover improper Rule 12b-1 fees, soft dollars, excessive commissions, directed brokerage, directors' compensation and the management fees charged the Funds by the Distributor Defendant, the Investment Advisor Defendants and the Director Defendants.

COUNT VIII

AGAINST THE INVESTMENT ADVISOR DEFENDANTS, DISTRIBUTOR DEFENDANTS AND TRUSTEE DEFENDANTS PURSUANT TO SECTION 36(b) OF THE ICA ON BEHALF THE PROPRIETARY FUNDS

158. Plaintiffs repeat and reallege each and every allegation contained above and otherwise incorporates the allegations contained above.

159. This Count is brought by the Class against the Distributor Defendant the Investment Advisor Defendants and the Trustee/Officer Defendants for breach of their fiduciary duties as defined by Section 36(b) of the Investment Company Act.

160. The Distributor Defendant, the Investment Advisor Defendants, and the Trustee/Officer Defendants had a fiduciary duty to the Funds and the Class with respect to the receipt of compensation for services and of payments of a material nature made by and to the Distributor Defendant, the Investment Advisor Defendants, and the Trustee/Officer Defendants.

161. The Distributor Defendant, the Investment Advisor Defendants, and the Trustee Defendants violated Section 36(b) by improperly charging investors in the Funds' purported Rule 12b-1 marketing fees. Furthermore, these Defendants improperly failed to disclose to investors the conflicts of interest regarding fee arrangements, which harmed Plaintiffs. These Defendants caused the Funds and their investors to pay inflated commissions (including soft dollar payments) and recouped from the Funds and their investors, through management and other fees, the cost of any revenue sharing payments purportedly made from advisor or distributor assets. These Defendants also charged excessive advisory fees under 36(b) because they improperly inflated management fees and shifted expenses from the Investment Advisors to the Funds' investors without a corresponding reduction in their management fees to reflect that shift in expense.

162. By reason of the conduct described above, the Distributor Defendants, the Investment Advisor Defendants, and the Trustee/Officer Defendants violated Section 36(b) of the Investment Company Act.

COUNT IX

**ON BEHALF OF THE HOLDERS SUBCLASS AGAINST UBS AS
CONTROL PERSON OF THE DISTRIBUTOR DEFENDANT
AND THE INVESTMENT ADVISOR DEFENDANTS
FOR VIOLATION OF SECTION 48(a) OF THE ICA**

163. Plaintiffs and the other members of the Holder Subclass repeat and reallege each and every allegation contained above as if fully set forth herein.

164. This Count is brought pursuant to Section 48(a) of the Investment Company Act against UBS as control person of the Distributor Defendant and the Investment Advisor Defendants, who caused the Distributor Defendant and the Investment Advisor Defendants to commit the violations of the Investment Company Act alleged herein.

165. The Distributor Defendant is liable under Sections 34(b), 36(a) and 36(b) of the Investment Company Act to the Funds as set forth herein.

166. The Investment Advisor Defendants are liable under Sections 34(b), 36(a) and 36(b) of the Investment Company Act as set forth herein.

167. UBS was a “control person” of the Distributor Defendant and the Investment Advisor Defendants and caused the violations complained of herein. By virtue of their positions of operational control and/or authority over the Investment Advisor Defendants and/or Distributor Defendant – UBS, directly and indirectly, had, and exercised, the power and authority to cause the Distributor Defendant and/or the Investment Advisor Defendants to engage in the wrongful conduct complained of herein.

168. Pursuant to Section 48(a) of the Investment Company Act, UBS is liable to Plaintiffs to the same extent as are the Distributor Defendant and the Investment Advisor Defendants for their primary violations of Sections 34(b), 36(a) and 36(b) of the Investment Company Act.

169. By virtue of the foregoing, the Funds, Plaintiffs and other Class members are entitled to damages against UBS.

COUNT X

**ON BEHALF OF THE HOLDERS SUBCLASS AND THE
FINANCIAL PLANS SUBCLASS AGAINST THE INVESTMENT
ADVISOR DEFENDANTS FOR BREACH OF FIDUCIARY DUTY**

170. Members of the Holders Subclass and the Financial Plans Subclass repeat and reallege each of the preceding allegations as though fully set forth herein.

171. As Advisors to the UBS Funds, the Investment Advisor Defendants were fiduciaries to members of the Holders Subclass and the Financial Plans Subclass and were required to act with the highest obligations of good faith, loyalty, fair dealing, due care and candor.

172. As set forth above, the Investment Advisor Defendants breached their fiduciary duties to members of the Holders Subclass and the Financial Plans Subclass.

173. Members of the Holders Subclass and the Financial Plans Subclass have been injured as a direct, proximate and foreseeable result of such breach on the part of the Investment Advisor Defendants and have suffered substantial damages.

174. Because the Investment Advisor Defendants acted with reckless and willful disregard for the rights of members of the Holders Subclass, the Investment Advisor Defendants are liable for punitive damages in an amount to be determined by the jury.

COUNT XI

**ON BEHALF OF THE HOLDERS SUBCLASS AND THE FINANCIAL
PLAN SUBCLASS AGAINST THE TRUSTEE DEFENDANTS
FOR BREACH OF FIDUCIARY DUTY**

175. Members of the Holders Subclass and the Financial Plans Subclass repeat and reallege each of the preceding allegations as though fully set forth herein.

176. As UBS Funds Trustees, the Trustee Defendants had a fiduciary duty to the UBS Funds and UBS Funds' investors to supervise and monitor the Investment Advisor Defendants.

177. The Trustee Defendants breached their fiduciary duties by reason of the acts alleged herein, including their knowing or reckless failure to prevent the Investment Advisor Defendants from: (1) charging the UBS Funds and UBS Funds' investors improper Rule 12b-1 marketing fees; (2) making improper undisclosed payments of soft dollars; (3) making unauthorized use of "directed brokerage" as a marketing tool; and (4) charging the UBS Funds for excessive and improper commission payments to brokers and financial advisors.

178. Members of the Holders Subclass and the Financial Plans Subclass have been injured as a direct, proximate and foreseeable result of such breach on the part of the Investment Advisor Defendants and have suffered substantial damages.

179. Because the Investment Advisor Defendants acted with reckless and willful disregard for the rights of members of the Holders Subclass and the Financial Plan Subclass, the Investment Advisor Defendants are liable for punitive damages in an amount to be determined by the jury.

COUNT XII

**FOR VIOLATIONS OF THE NEW YORK GENERAL BUSINESS LAW §349 ON
BEHALF OF THE FINANCIAL PLAN SUBCLASS AGAINST ALL DEFENDANTS**

180. Members of the Financial Plan Subclass hereby reallege and incorporate by reference all paragraphs previously alleged herein. Pursuant to Section 349(h) of New York's General Business Law, members of the Financial Plan Subclass assert this cause of action against each and every Defendant on behalf of themselves and the Financial Plan Subclass for violations of Section 349 of New York's General Business Law ("Section 349"). It is appropriate to treat these Defendants as a group for pleading purposes and to presume that the misconduct complained of herein represents the collective action of all Defendants.

181. As set forth herein, Defendants' acts, practices, representations, statements, omissions, and courses of conduct with respect to the advertising, marketing, and sale of financial plans violate Section 349 in that, among other things:

- (a) Defendants misrepresented, and continue to misrepresent, that they provide personalized, objective financial advice and recommendations;
- (b) Defendants misrepresented, and continue to misrepresent, that their financial advice and recommendations are intended exclusively to promote clients' best interests;
- (c) Defendants inadequately disclosed and/or concealed, and continue to inadequately disclose and/or conceal, conflicts of interest, including that their financial advice and recommendations were designed to generate fees and sales commissions and increase assets under Defendants' management without regard to the client's best interest;
- (d) Defendants inadequately disclosed and/or concealed, and continue to inadequately disclose and/or conceal that their financial advice and recommendations were

intended to induce clients to purchase Defendants' financial products without regard to the client's best interest;

(e) Defendants' advertisements and marketing practices fail to disclose, inadequately disclose, and/or conceal material information regarding hidden costs and fees and conflicts of interest;

(f) Defendants' advertising and marketing practices were and are likely to mislead, deceive, and/or damage consumers.

182. Defendants' omissions, misrepresentations and practices alleged with respect to the financial plans were unfair and deceptive when made and were made with the intent to, and did, (a) deceive Plaintiffs and the members of the Financial Plan subclass, and (b) induce Plaintiffs and members of the Financial Plan subclass to purchase the financial plans offered by Defendants, in violation of Section 349.

183. Members of the Financial Plan subclass never knew, nor could they have known, of Defendants' omissions, misrepresentations, and unlawful practices with respect to the advertising, marketing, and sale of Defendants' financial plans.

184. As a direct and proximate result of Defendants' misrepresentations, misleading statements, and/or deceptive practices, in violation of Section 349, the members of the Financial Plan Subclass have been injured and suffered harm in that, among other things, members of the Financial Plan Subclass have purchased Defendants' financial plans when they otherwise would not have and/or the Financial Plan Subclass members paid more for the Financial Plans than they otherwise would have.

185. Pursuant to Section 349(h) of New York's General Business Law, the members of the Financial Plan Subclass are entitled to damages against all Defendants and an order

permanently enjoining Defendants from engaging in the unlawful practices described herein, as well as recovery of attorneys' fees and costs of the litigation.

COUNT XIII

**FOR VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW §350
ON BEHALF OF THE FINANCIAL PLAN SUBCLASS AGAINST ALL DEFENDANTS**

186. Members of the Financial Plan Subclass hereby reallege and incorporate by reference all paragraphs previously alleged herein. Pursuant to Section 350-e(3) of New York's General Business Law, members of the Financial Plan Subclass assert this cause of action against each and every Defendant on behalf of themselves and the Financial Plan Subclass for violations of Sections 350 of New York's General Business Law ("Section 350"). It is appropriate to treat these Defendants as a group for pleading purposes and to presume that the misconduct complained of herein represents the collective action of all Defendants.

187. As set forth herein, Defendants' acts, practices, representations, statements, omissions, and courses of conduct with respect to the advertising, marketing, and sale of Financial Plans violate Section 350 in that, among other things:

(a) Defendants misrepresented, and continue to misrepresent, that they provide personalized, objective financial advice and recommendations in the advertising and marketing of their financial plans and members of the Financial Plan Subclass relied on these misrepresentations in purchasing their Financial Plans;

(b) Defendants misrepresented, and continue to misrepresent, in the advertising and marketing of their financial plans that their financial advice and recommendations are intended exclusively to promote clients' best interests and members of the Financial Plan Subclass relied on these misrepresentations in purchasing their Financial Plans;

(c) Defendants' advertisements and marketing practices fail to disclose, inadequately disclose, and/or conceal material information;

(d) Defendants' advertising and marketing practices were and are likely to mislead, deceive, and/or damage consumers.

188. Defendants' omissions, misrepresentations and practices alleged with respect to the Financial Plans were misleading and deceptive when made and were made with the intent to, and did, (a) deceive the members of the Financial Plan subclass, and (b) induce members of the Financial Plan subclass to purchase the Financial Plans offered by Defendants, in violation of Section 350.

189. The members of the Financial Plan subclass never knew, nor could they have known, of Defendants' omissions, misrepresentations, and unlawful practices with respect to the advertising, marketing, and sale of Defendants' financial plans.

190. As a direct and proximate result of Defendants' misrepresentations, misleading statements, and/or deceptive practices, in violation of Section 350, members of the Financial Plan Subclass have been injured and suffered harm in that, among other things, the members of the Financial Plan Subclass have purchased Defendants' Financial Plans when they otherwise would not have and/or the Financial Plan Subclass have paid more for the financial plans than they otherwise would have.

191. Pursuant to Section 350-e(3) of New York's General Business Law, the members of the Financial Plan Subclass are entitled to damages against all Defendants and an order permanently enjoining Defendants from engaging in the unlawful practices described herein, as well as recovery of attorneys' fees and costs of the litigation.

**REQUEST FOR ORDER PRESERVING ELECTRONIC MAIL RELATED TO THE
ABOVE MENTIONED ACTION**

192. On July 13, 2005 the SEC entered a cease-and-desist order against UBS Securities LLC for violating the record-keeping requirements of Section 17(a)(1) of the Exchange Act and Rule 17a-4. UBS failed to preserve for three years (July 1, 1999 to June 30, 2002), the first two years of which the records should be in an easily accessible place, all electronic mail communications (including inter-office memoranda and communications) received and sent by its employees that related to its business as a member of an exchange, broker or dealer. The SEC, NYSE, and NASD discovered UBS lacked adequate systems or procedures to ensure the preservation of electronic mail during their investigation of the company's research and investment banking activity. As a result, UBS agreed to pay penalties and fines totaling \$2.1 million to proceedings and actions taken by the SEC, NYSE, and NASD. In light of Defendants' failure to maintain adequate systems for preserving emails, Plaintiffs respectfully request the Court order that all documents related to the allegations set forth herein be adequately preserved.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment as follows:

- a. Determining that this action is a proper class action and appointing Plaintiffs as Lead Plaintiffs and their counsel as Lead Counsel for the Class and certifying them as Class representatives under Rule 23 of the Federal Rules of Civil Procedure;
- b. Awarding compensatory damages in favor of Plaintiffs and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

- c. Awarding Plaintiffs and other members of the Class rescission of their contracts with the Advisors, including recovery of all fees which would otherwise apply and recovery of all fees paid to the Advisors pursuant to such agreements;
- d. Awarding Plaintiffs and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;
- e. Ordering that all documents related to the allegations set forth herein be adequately preserved by Defendants; and
- f. Such other and further relief as the Court may deem just and proper.

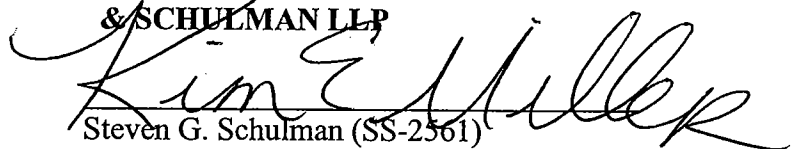
JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

Dated: July 28, 2005

Respectfully submitted,

**MILBERG WEISS BERSHAD
& SCHULMAN LLP**



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EXHIBIT A

**CERTIFICATION OF PROPOSED NAMED PLAINTIFF
PURSUANT TO FEDERAL SECURITIES LAWS**

Michael and Susan Hoffman, each declare the following as to the claims asserted, or to be asserted, under the federal securities laws:

1. I have reviewed the complaint of UBS-AG, UBS Global Asset Management (US) and UBS Financial Services prepared by Milberg Weiss Bershad & Schulman LLP, whom I designate as my counsel in this action for all purposes.
2. I did not acquire the referenced fund units at the direction of plaintiff's counsel or in order to participate in any private action under the federal securities laws.
3. I am willing to serve as a named plaintiff either individually or as part of a group.
4. I will not accept any payment for serving as a representative party beyond my pro rata share of any recovery, except reasonable costs and expenses, such as lost wages and travel expenses, directly related to the class representation, as ordered or approved by the court pursuant to law.
5. I have not sought to serve or served as a representative party for a class in an action under the federal securities laws within the past three years.
6. I understand that this is not a claim form, and that my ability to share in any recovery as a member of the class is unaffected by my decision to serve as a representative party.
7. Since May 1, 2000, I have made the following transactions in referenced funds, and will provide records of those transactions upon request:

<u>Fund/Ticker</u>	<u>Trade Date</u>	<u>No. of Shares/Units</u>	<u>Price Per Share/Unit</u>	<u>Buy or Sell</u>
Davis NY Venture Fund	8/20/01	2031.694	24.61	Buy
Liberty Utilities Fund	8/20/01	2521.432	19.83	Buy
UBS S&P Index Fund	1/18/01	3162.555	15.81	Buy

Please use and attach additional pages if necessary.

I declare under penalty of perjury that the foregoing is true and correct

Executed this 5th day of July, 2005

Michael Hoffman
Michael Hoffman

Signature

Susan Hoffman
Susan Hoffman

Signature

PLAINTIFF CERTIFICATIONYakovPrager

("Plaintiff") hereby states that:

1. Plaintiff has reviewed the complaint and has authorized the filing of the complaint on his/her behalf.
2. Plaintiff did not purchase any of the securities which are the subject of this action at the direction of his/her counsel or in order to participate in this private action.
3. Plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.
4. Plaintiff was a client of UBS Financial Services Inc. (formerly know as UBS PaineWebber, Inc.).
5. The following includes all of Plaintiff's transactions in the **UBS Global Asset Management Mutual Funds** and/or other **Preferred Funds** (as described in Exhibit A) during the class period specified in the complaint:

<u>SECURITY</u> (Name of UBS Fund and/or Preferred Fund)	<u>TRANSACTION</u> (Purchase, Sale)	<u>TRADE DATE</u>	<u>PRICE PER SECURITIES/SHARE</u>	<u>QUANTITY</u>
See attached redacted brokerage statements				

Please list other transactions on a separate sheet of paper, if necessary.

6. Plaintiff has not served or sought to serve as a representative party on behalf of a class under the federal securities laws during the last three years, unless otherwise stated in the space below:
7. Plaintiff will not accept any payment for serving as a representative party on behalf of a class except to receive his pro rata share of any recovery, or as ordered or approved by the court including the award to a representative party of reasonable costs and expenses including lost wages relating to the representation of the class.

Plaintiff declares under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of July, 2005.

Yakov Prager
Signature

January 2002

UBS PaineWebberSM Resource Management Account[®]

Account Number TS 71205 LS Page 2 of 3
Your Financial Advisor
STEIF/LOWENTHAL
212-309-3000/800-882-7275

EZDL089888-X138

Investment objectives

The following return objective and risk profile describe overall goals for this account. For each account held, you choose one return objective and primary and, if applicable, secondary risk profile. A full description of the alternatives is included on the back of the first page. If you have questions regarding these objectives or wish to change them, please contact your Financial

Case 1:05-cv-06817-LBS Document 1-1 Filed 02/29/07 Page 26 of 40

Unrealized gain/loss indicates the cost basis versus the current value for each security lot from a tax reporting perspective and is the amount that would be realized should you sell the lot. Cost basis may need to be adjusted for return of capital payments. An "earnings" lot represents the aggregate cost basis of all dividends paid that were reinvested in the fund. If you have earnings lots, an additional calculation appears showing the overall change in value of your current position versus the money you invested in the fund. This "Investment return" shows overall performance of your total investment including dividends reinvested in the fund and market appreciation or depreciation. The "Investment return" figure does not include cash dividends not reinvested in the fund.

Total shares	Description	Price	Current value	Est. annual income	Trade date	Shares purchased	Purchase price	Cost basis	Unrealized gain/loss
229.369	DAVIS NEW YORK VENTURE FD CL B	23.630	5,419.98		10/06/97	192.000	23.640	4,538	1
	Total client investment:		\$ 4,928		10/06/97	16.343	23.343	390	3
	Investment return:		\$ 491		Earnings	21.026	26.159	550	33
52.029	FT-FRANKLIN BIOTECH DISC A	51.240	2,665.96		08/31/00	51.894	96.350	5,000	-2,340
	Total client investment:		\$ 5,000		Earnings	.135	72.444	9	2
	Investment return:		\$ -2,334						

Continued on page 3

January 02/ TS 71205 LS

February 2002

Account Number TS 71205 LS

Page 2 of 3

UBS PaineWebberSM Resource Management Account[®]

Your Financial Advisor

STEIF/LOWENTHAL

212-309-3000/800-682-7275

EZDL098046-X16

Investment objectives

The following return objective and risk profile describe overall goals for this account. For each account held, you choose one return objective and primary and, if applicable, secondary risk profile. A full description of the alternatives is included on the back of the first page. If you have questions regarding these objectives or wish to change them, please contact your Financial Advisor or Branch Manager at your branch office to update your account objectives.

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of capital payments. An "earnings" lot represents the aggregate cost basis of all dividends paid that were reinvested in the fund. If you have earnings lots, an additional calculation appears showing the overall change in value of your current position versus the money you invested in the fund. This "Investment return" shows overall performance of your total investment including dividends reinvested in the fund and market appreciation or depreciation. The "Investment return" figure does not include cash dividends not reinvested in the fund.

Total shares	Description	Price	Current value	Est. annual income	Trade date	Shares purchased	Purchase price	Cost basis	Unrealized Gain/loss
229.369	DAVIS NEW YORK VENTURE FD CL B	23.270	5,337.41		10/06/97	192.000	23.640	4,538	799
	Total client Investment:		\$ 4,928		10/06/97	16.343	23.343	390	60
	Investment return:		\$ 409		Earnings	21.026	26.159	550	
52.029	FT-FRANKLIN BIOTECH DISC A	48.510	2,523.92		08/31/00	51.894	96.350	5,000	-2,482
	Total client Investment:		\$ 5,000		Earnings	.135	72.444	9	42
	Investment return:		\$ -2,476						

Continued on page 3

February 02/ TS 71205 LS

May 2002

Account Number TS 71205 LS

Your Financial Advisor

STEIF/LOWENTHAL

212-309-3000/800-682-7275

Page 2 of 3

UBS PaineWebberSM Investment Account

PZDL155401-X16

Case 1:05-cv-06817-LBS Document 1-1 Filed 07/29/06 Page 28 of 40

Investment objectives

The following return objective and risk profile describe overall goals for this account. For each account held, you choose one return objective and primary and, if applicable, secondary risk profile. A full description of the alternatives is included on the back of the first page. If you have questions regarding these objectives or wish to change them, please contact your Financial Advisor or Branch Manager at your branch office to update your account objectives.

of capital payments. An "earnings" lot represents the current position versus the money you invested in the fund. This "Investment return" shows overall "Investment return" figure does not include cash dividends not reinvested in the fund.

Total shares	Description	Price	Current value	Est. annual income	Trade date	Shares purchased	Purchase price	Cost basis	Unrealized Gain/Loss
229.369	DAVIS NEW YORK VENTURE	23.760	5,449.80		10/06/97	192.000	23.640	4,538	93
	FD CL B				10/06/97	16.343	23.343	390	21
	Total client investment:		\$ 4,928		Earnings	21.026	26.159	550	30
	Investment return:		\$ 521						
52.029	FT-FRANKLIN BIOTECH	39.550	2,057.74		08/31/00	51.894	96.350	5,000	-2,947
	DISC A				Earnings	.135	72.444	9	3
	Total client investment:		\$ 5,000						
	Investment return:		\$ -2,942						

Continued on page 3

May 02/ TS 71205 LS

June 2002

UBS PAINWEBBER INC.
200 PARK AVENUE
30TH FLOOR
NEW YORK NY, 10168
NZIL097043-X136 - 0802 - TS - 0

Value on May 31
Value on June 28
Debit balance in 06/28 value

Page 1 of 2

\$ 4,570.23
\$ 3,694.94
\$ -5,346.89

UBS PaineWebberSM Investment Account

Account Number TS 71205 LS

Your Financial Advisor
STEIF/LOWENTHAL

212-309-3000/800-682-7275

MR. YAKOV PRAGER
128 SAINT KATHERINE PL
LAKEWOOD NJ 08701-1150

NZIL097043-X136

Asset portfolio

Prices, income and current values may be approximate. Refer to the disclosure on the back of the first page.

Quantity/face value	Description	Contract premium	Price	Current value	Est. Income
229.369	DAVIS NEW YORK VENTURE FD CL B		21.820	5,004.83	
52.029	FT-FRANKLIN BIOTECH DISC A		35.040	1,823.09	
241.430	PRUDENTIAL 20/20 FUND CLASS B		9.170	2,213.91	
5,000	STRUTHERS INC NEW				
					-----Price was unavailable-----

Return objective: Capital appreciation
Risk profile: Primary: Aggressive/Speculative
Secondary: None Selected

August 2002

UBS PAINWEBBER INC.
200 PARK AVENUE
30TH FLOOR
NEW YORK NY., 10168
NZIL039981-X16 - 0802 - TS - 0

Value on July 31
Value on August 30
Debit balance in 08/30 value

Page	1	of	2
\$	3,136.66		
\$	3,059.35		
\$	-5,413.92		

UBS PaineWebberSM Investment Account

Account Number TS 71205 LS

NZIL039981-X16

Your Financial Advisor
STEIF/LOWENTHAL 212-309-3000/800-682-7275

MR. YAKOV PRAGER
128 SAINT KATHERINE PL
LAKEWOOD NJ 08701-1150



Asset portfolio

Prices, income and current values may be approximate. Refer to the disclosure on the back of the first page.

Quantity/face value	Description	Contract premium	Price	Current value	Est. Income
229.369	DAVIS NEW YORK VENTURE FD CL B		20.800	4,770.87	
52.029	FT-FRANKLIN BIOTECH DISC A		33.110	1,722.68	

Continued on page 2

August 02/ TS 71205 LS

UBS PaineWebberSM Investment Account

NZIL105698-X138

Statement Period: September 2002

Account Number: TS 71205 LS
Your Financial Advisor
STEIF/LOWENTHAL
212-309-3000/800-682-7275

Asset portfolio

Prices, income and current values may be approximate. Refer to the disclosure on the back of the first page.

Quantity/face value	Description	Contract premium	Price	Current value	Est. income
229,369	DAVIS NEW YORK VENTURE FD CL B		18.960	4,348.83	
52,029	FT-FRANKLIN BIOTECH DISC A		31.630	1,645.67	
241,430	PRUDENTIAL 20/20 FUND CLASS B		7.420	1,791.41	
5,000	STRUTHERS INC NEW		-----Price was unavailable-----		
	Total		\$	7,785.91	

UBS PAINWEBBER INC.
200 PARK AVENUE
30TH FLOOR
NEW YORK NY., 10166
D011005011 00000016100003389 TS71205 0 0001E

UBS PaineWebberSM Confirmation

PAGE 1 OF 1

Account Number TS 71205
Your Financial Advisor
STEIF/LOWENTHAL

212-309-3000/

Important. Please retain for your records.

MR. YAKOV PRAGER
128 SAINT KATHERINE PL
LAKEWOOD NJ 08701-1150
00003389



We confirm the following transaction(s):

Trade activity

SOLD

Trade date
10/10/2002

Date processed
10/10/2002

Payment date/
Settlement date
10/16/2002

Reference no.	Quantity/ Face value	Description	Price	Gross amount	Commission/ Mark-up	Accrued Interest	Other Fees and charges	Total amount
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\$1,649.84

31.710

FT-FRANKLIN BIOTECH
DISC A
FB0ID 22830524795

52479

52.029

SOLICITED

SYMBOL MFFKDH CUSIP NO. 354713844

Capacity: Agent

52.029

\$1,649.84

Total:

\$1,649.84

It is important that you retain this trade confirmation for your tax and financial records. When remittances/securities are due, they must be received by us at the address above on or before the payment/settlement date. Payments not received by the settlement date may be subject to a late settlement fee. Please indicate your account number on your check or correspondence. Make checks payable to UBS PaineWebber Inc. Please see the back of this confirmation for additional terms and definitions applicable to this transaction.

UBS PaineWebber Inc. is an indirect subsidiary of UBS AG and an affiliate of UBS Warburg LLC.

UBS PAINWEBBER INC.
200 PARK AVENUE
30TH FLOOR
NEW YORK NY., 10166
D011005011 00000016100003389 TS71205 0 0001E



UBS PaineWebberSM Confirmation

PAGE 1 OF 1

Account Number TS 71205
Your Financial Advisor
STEIF/LOWENTHAL

212-309-3000/

Important. Please retain for your records.

MR. YAKOV PRAGER
128 SAINT KATHERINE PL
LAKEWOOD NJ 08701-1150
00003389



We confirm the following transaction(s):

Trade activity

SOLD

Trade date
10/10/2002

Date processed
10/10/2002

Payment date/
Settlement date
10/16/2002

Reference no	Quantity/ Face value	Description	Price	Gross amount	Commission/ Mark-up	Accrued Interest	Other Fees and charges	Total amount
52479	52.029	FT-FRANKLIN BIOTECH DISC A FB01D 22830524795	31.710	\$1,649.84				\$1,649.84
Total:		52.029		\$1,649.84				\$1,649.84

SYMBOL MFFKDH CUSIP NO. 354713844
Capacity: Agent

SOLICITED

It is important that you retain this trade confirmation for your tax and financial records. When remittances/securities are due, they must be received by us at the address above on or before the payment/settlement date. Payments not received by the settlement date may be subject to a late settlement fee. Please indicate your account number on your check or correspondence. Make checks payable to UBS PaineWebber Inc. Please see the back of this confirmation for additional terms and definitions applicable to this transaction.

UBS PaineWebber Inc. is an indirect subsidiary of UBS AG and an affiliate of UBS Warburg LLC.



MR. YAKOV PRAGER
128 SAINT KATHERINE PL
LAKEWOOD NJ 08701-1150

This month at a glance

Prices, income and current values may be approximate. Refer to the disclosure on the back of the first page.

Page 1 of 2

October 02/TS 71205 LS

NZIA040899-X16

UBS PaineWebberSM Investment Account

Statement Period: October 2002

Account Number: TS 71205 LS
Your Financial Advisor
STEIF/LOWENTHAL
212-309-3000/800-682-7275



Activity

Refer to the disclosure on the back of the first page regarding the Price/Value presented for restricted securities.

Date	Activity	Description	Quantity	Price / Value / Comment	Amount
09/30		Balance forward		\$	-5,448.30
01/16	SOLD	FT-FRANKLIN BIOTECH DISC A FB0ID 22830524795	-52.029	31.710	1,649.84



UBS PAINWEBBER INC.
200 PARK AVENUE
30TH FLOOR
NEW YORK NY, 10166
NZIA035047-X16 - 1102 - TS - 0

Your Financial Advisor
STEIF/LOWENTHAL
212-309-3000/800-682-7275

Investment Account

NZIA035047-X16

Statement Period: November 2002
Account Number: TS 71205 LS

MR. YAKOV PRAGER
128 SAINT KATHERINE PL
LAKEWOOD NJ 08701-1150

00014355

If wish to change them, please contact your Financial
count objectives.

Secondary: None Selected

disclosure on the back of the first page.

777 369

DAVIS NEW YORK VENTURE FD CL B

B

Est. Income

Current value

Price

Contract premium

4,805.28

20.950

Price was unavailable

UBS PAINWEBBER INC.
200 PARK AVENUE
30TH FLOOR
NEW YORK NY, 10166
NZIA041198-X236 -0103 - TS - 0

Your Financial Advisor
STEIF/LOWENTHAL
212-309-3000/800-682-7275

UBS PaineWebber
Investment Account

NZIA041198-X236

Statement Period: January 2003
Account Number: TS 71205 LS

MR. YAKOV PRAGER
128 SAINT KATHERINE PL
LAKEWOOD NJ 08701-1150

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229.369 DAVIS NEW YORK VENTURE FD CL B

Contract premium

19.620 4,500.21



Account Number: TS 71205 LS
Your Financial Advisor
STEIF/LOWENTHAL
212-309-3000/800-682-7275

UBS PaineWebberSM
Investment Account

NZIA102998-X1236

Statement Period: March 2003

Asset portfolio - continued

Prices, income and current values may be approximate. Refer to the disclosure on the back of the first page.

Quantity/face value	Description	Contract premium	Price	Current value	Est. income
229.369	DAVIS NEW YORK VENTURE FD CL B		18.970	4,351.12	



Account Number: TS 71205 LS
Your Financial Advisor
STEIF/LOWENTHAL
212-309-3000/800-682-7275

Investment Account

NZIA037699-X6

Statement Period: April 2003

Asset portfolio

Prices, income and current values may be approximate. Refer to the disclosure on the back of the first page.

Quantity/face value	Description	Contract premium	Price	Current value	Est. Income
229.369	DAVIS NEW YORK VENTURE FD CL B		20.640	4,734.17	

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UBS FINANCIAL SERVICES INC.
1000 HARBOR BOULEVARD
WEEHAWKEN, NJ 07086-6790

Your Financial Advisor
STEIF/LOWENTHAL
212-309-3000/800-682-7275

INVESTMENT ACCOUNT

NZ/A111373-X1256
- 000002S

Account Number: TS 71205 LS

NZ/A111373-X1256 -0903 - TS - 0

September 2003

MR. YAKOV PRAGER
128 SAINT KATHERINE PL
LAKEWOOD NJ 08701-1150

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Contract premium	Price	Current value	Est. Income
		-----Price was unavailable-----	
	22,960	5,266.31	

229.369 DAVIS NEW YORK VENTURE FD CL B

Member SIPC

Page 1 of 2

September 03/ TS 71205 LS